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No. 79-1922

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1979

CENTRAL OF GEORGIA RAILROAD COMPANY,
*Petitioner,*
v.
JAMES E. HENDLEY,
*Respondent.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

## MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF FOR THE NATIONAL RAILWAY LABOR CONFERENCE AS AMICUS CURIAE IN SUPPORT OF THE PETITION

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## MOTION OF THE NATIONAL RAILWAY LABOR CONFERENCE FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

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The National Railway Labor Conference hereby moves the Court, pursuant to its Rule 42, for leave to file the attached *amicus* brief in support of the Petition for Writ of Certiorari.

The Conference is an unincorporated association which includes almost all of the Nation's Class I railroads among its members. One such member is the petitioner Central of Georgia Railroad Company. The Conference represents its members in industrywide collective bargaining with unions representing railroad employees and with regard to a wide variety of other labor relations problems of concern to the railroad industry generally. One such concern is the proper functioning of the procedures for adjusting claims and grievances under Section 3 of the Railway Labor Act, 45 U.S.C. 153.

The decision by the Fifth Circuit that is the subject of the Petition is of major concern to the Conference and to the railroads generally. As is more fully set forth in the attached *amicus* brief, the Fifth Circuit in that decision has completely disregarded the procedures and standards specified in Section 3 of the Railway Labor Act in setting aside an award by an adjustment board established under Section 3. If permitted to stand as a precedent, that decision could be seized upon to justify disregard of the statute in other circumstances affecting other railroads. We believe that the attached *amicus* brief will assist the Court in appreciating the magnitude of the error by the court below and the general national importance of its decision and will otherwise supplement the arguments contained in the Petition.

For these reasons, we request the Court to enter an order granting this motion so as to permit the filing of the attached *amicus* brief.

Respectfully submitted,

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## BRIEF FOR THE NATIONAL RAILWAY LABOR CONFERENCE AS AMICUS CURIAE IN SUPPORT OF THE PETITION

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This *amicus* brief is being filed with the leave of the Court pursuant to its Rule 42.

### INTEREST OF AMICUS CURIAE

As is more fully set forth in the motion for leave to file, the National Railway Labor Conference and its member railroads are vitally concerned with the decision below because of the precedent which it will establish, unless reviewed and reversed by this Court, for setting aside an award by an adjustment board established under Section 3 of the Railway Labor Act (45 U.S.C. 153) without compliance with the procedures and standards specified by the Congress therein for reviewing such arbitration awards. The finality of adjustment board awards, subject only to narrowly limited judicial review as provided in Section 3, is an integral part of the statutory

claims and grievance procedure established by the Congress for railroads and their employees, and is essential to the proper functioning of that procedure. By undermining the finality which the Congress thus provided, the decision below is of major concern to the Conference and its member railroads as well as being erroneous.

## STATEMENT OF THE CASE

The pertinent facts and procedural history of this case are fully set forth in the Petition at 2-6. For purposes of this *amicus* brief, we emphasize the following matters which for the most part are set forth in the opinion of the Fifth Circuit, reported at 609 F.2d 1146 and printed in the Petition as Appendix B.

Hendley sued to enjoin the Central of Georgia from investigating charges that he had been disloyal to the railroad in violation of its rules, alleging that such an investigation would violate 45 U.S.C. 60. The District Court held that he was not entitled to relief and dismissed the complaint. 442 F. Supp. 482, Pet. App. D. In its view, Hendley was attempting "to by-pass the mandatory remedies prescribed by the Congress" in Section 3 of the Railway Labor Act (45 U.S.C. 153) which clearly afforded "an adequate administrative remedy under the law." Pet. App. 23a. An injunction pending appeal was denied by both the District Court and the Court of Appeals. See Pet. App. 8a.

Thus, while that appeal was pending, the Central of Georgia proceeded with its investigation and dismissed Hendley for disloyalty. Hendley appealed his dismissal to Public Law Board No. 2086, established pursuant to Section 3 Second of the Railway Labor Act (45 U.S.C. 153 Second), as he was authorized to do by Section 3 First (i), 45 U.S.C. 153 First (i).[1] That arbitration

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[1] The statute provides for the establishment of such special adjustment or public law boards to arbitrate claims and

board issued an award upholding the railroad's finding that Hendley had been disloyal, but reducing the penalty from dismissal to reinstatement without back pay (Pet. App. F). Hendley did not petition a Federal district court to review that award as provided in 45 U.S.C. 153 First (q), and thus the adjustment board did not "file in the court the record of the proceedings on which it based its action" as is required in the event such a petition for review is instituted.[2]

Rather, Hendley was allowed (over the railroad's objection) by the Court of Appeals to lodge with that court, in connection with the then-pending appeal in this case, a copy of the transcript of the railroad's investigatory hearing and the railroad lodged with that court a copy of the arbitration award. The full record of the proceeding before the arbitration board was not lodged with or filed in that court, and the pending appeal was not taken from the arbitration award or from a district court decision which had reviewed that award. Nonetheless, the Court of Appeals held the arbitration award to be "null and void" and remanded the case to the District Court with directions "to order that the award . . . be set aside, and that Hendley receive full back pay for the time that he was suspended or unemployed as a result of the railroad's actions." Pet. App. 16a. In so doing, the court relied upon its own "review of the testimony before the [railroad's] investigating board" rather than upon the facts found by the arbitration board. Pet. App. 15a.

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grievances in lieu of the National Railroad Adjustment Board established by Section 3 First. See, *e.g.*, *Andrews* v. *Louisville & Nashville R. Co.*, 406 U.S. 320, 325 (1972).

[2] Those provisions are applicable to judicial review of awards by adjustment boards established under Section 3 Second as well as to awards of the National Railroad Adjustment Board under Section 3 First. *E.g.*, *United Transp. Union* v. *Indiana H.B.R. Co.*, 540 F.2d 861 (7th Cir. 1976).

## ARGUMENT

In the decision sought to be reviewed, the Court of Appeals has disregarded the procedures and standards specified by the Congress for reviewing and setting aside an award by an adjustment board established under Section 3 of the Railway Labor Act. Unless reversed by this Court, that decision will partially reopen and in some aspects widen a judicial exception to the statutory requirements which this Court, only eight years ago, emphatically overruled in *Andrews* v. *Louisville & Nashville R. Co.*, 406 U.S. 320 (1972).

Section 3 First (i) of the Act provides that "disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions . . . shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes," and that, if the parties to the dispute "fail to reach an adjustment in this manner, the disputes may be referred . . . by either party" to an adjustment board. 45 U.S.C. 153 First (i). The adjustment board is required to issue a written award which "shall be final and binding upon both parties to the dispute." 45 U.S.C. 153 First (m). The only statutory exception is that, in a petition to enforce an award under 45 U.S.C. 153 First (p) or to review an award under 45 U.S.C. 153 First (q), an arbitration award may be "set aside" if the adjustment board failed "to comply with the requirements of this Act, for failure of the [award] to conform, or to confine itself, to matters within the scope of the [board's] jurisdiction, or for fraud or corruption by a member of the" adjustment board. With that exception, "the findings and order of the [board] shall be conclusive on the parties . . . ." 45 U.S.C. 153 First (q).

Such a petition to enforce or review an arbitration award must be "file[d] in the District Court of the United States for the district in which [the petitioner] resides or in which is located the principal operating office of the carrier, or through which the carrier operates," 45 U.S.C. 153 First (p), and when so filed the "Adjustment Board shall file in the court the record of the proceedings on which it based its action." 45 U.S.C. 153 First (q).

This Court has repeatedly "made it clear that this statutory grievance procedure is a mandatory, exclusive, and comprehensive system for resolving grievance disputes" in the railroad industry. *Locomotive Engrs.* v. *L. & N. R. Co.*, 373 U.S. 33, 38 (1963). "A corollary of this view has been the principle that the process of decision through the Adjustment Board cannot be challenged collaterally by methods of review not provided in the statute." *Ibid.*

At one time, a judicial exception, first recognized in *Moore* v. *Illinois Central R. Co.*, 312 U.S. 630 (1941), permitted a discharged employee who accepted his discharge as final (rather than seeking reinstatement) to bring an action under state law to recover damages for wrongful discharge. Even when that exception was in force, a discharged employee who submitted his grievance to an adjustment board was bound by the board's decision, subject to judicial review specifically provided by the Act, and could not in that circumstance obtain an independent judicial determination as to the validity of his discharge. *Union Pacific R. Co.* v. *Price*, 360 U.S. 601, 616 (1959). And, in *Andrews* that Court expressly overruled *Moore* and its progeny, and made emphatically clear that:

> "A party who has litigated an issue before the Adjustment Board on the merits may not relitigate that issue in an independent judicial proceeding. . . . He is limited to the judicial review of the Board's

> proceedings that the Act itself provides. . . . In such a case the proceedings afforded by 45 U.S.C. § 153 First (i), will be the only remedy available to the aggrieved party." 406 U.S. at 325.

Hence, the court below plainly erred in permitting Hendley to relitigate issues decided by the adjustment board "in an independent judicial proceeding" entirely apart from "the judicial review of the Board's proceedings that the Act itself provides." Moreover, in thus acting to set aside the arbitration award outside of the statutory review procedure, the Court of Appeals did not even give lip service to the statutory limitations upon the scope of that judicial review which this Court noted as being "among the narrowest known to the law," in *Union Pacific R. Co.* v. *Sheehan*, 439 U.S. 89, 91 (1978). This Court went on in *Sheehan* to hold that the provision in 45 U.S.C. 153(q), under which an award "may be set aside only for the three reasons specified therein . . . , means just what it says." *Id.* at 93. And, the Court of Appeals made its own independent determination of the facts—on the basis of a partial record—even though the statutory command that the "findings" of an arbitration board "shall be conclusive on the parties" has generally been recognized as virtually precluding review of a board's factual determinations. See, *e.g.*, *Kotakis* v. *Elgin, Joliet & Eastern Railway Co.*, 520 F.2d 570, 575 (7th Cir. 1975), cert. den., 423 U.S. 1016 (1975); *Devita* v. *Burlington Northern, Inc.*, 494 F.2d 347, 349 (9th Cir. 1974), cert. den., 419 U.S. 869 (1974).

The Court of Appeals attempted to justify its disregard of the Railway Labor Act as construed by this Court on the ground that "45 U.S.C. § 60 . . . override[s] the statutory arbitration processes." Pet. App. 9a. But, nothing in that statute or in the Railway Labor Act so provides, and this Court has not recognized such an exception in its decisions. Even if the court below were correct in concluding that a district court has ju-

risdiction to enjoin a railroad from conducting a disciplinary proceeding "which is violative of § 60," Pet. App 15a, that did not occur here. The discipline investigation was not enjoined and therefore went forward, and Hendley voluntarily invoked arbitration by an adjustment board. The Court of Appeals did not explain or cite any authority for the proposition that the assumed jurisdiction to enjoin an investigation in the first place somehow conferred jurisdiction to set aside the arbitration award in a proceeding which was not brought for that purpose and did not otherwise comply with the procedures and standards required by the Railway Labor Act for review of adjustment board awards. In making that quantum jump, the court plainly contravened the language of the Railway Labor Act and the decisions of this Court construing that statutory language.

The general importance of the issues involved to the proper functioning of the Railway Labor Act is indicated by the statement of this Court in *Union Pacific R. Co.* v. *Sheehan*, *supra* at 94, that:

> "The effectiveness of the Adjustment Board in fulfilling its task depends on the finality of its determination. Normally finality will work to the benefit of the worker: He will receive a final administrative answer to his dispute; and if he wins, he will be spared the expense and effort of time-consuming appeals which he may be less able to bear than the railroad. . . . Here, the principle of finality happens to cut the other way. But even-handed application of this principle is surely what the Act requires."

The importance of those issues, and thus of review by this Court, is emphasized by the fact that, as this Court also has observed, "[t]here is no more elemental cause for discharge of an employee than disloyalty to his

employer." *Labor Board* v. *Electrical Workers*, 346 U.S. 464, 472 (1953). Hence, the dispute between Hendley and the Central of Georgia that gave rise to the arbitration award did not concern some matter of "merely peripheral concern" under the Railway Labor Act, but rather conduct that plainly is within the "central aim" of the statutory grievance procedure. See *Farmer* v. *Carpenters*, 430 U.S. 290, 296 (1977). It is as important in such circumstances to protect the regulatory scheme established by the Railway Labor Act as it is to protect the regulatory scheme under the Labor Management Relations Act involved in *Farmer*.

## CONCLUSION

For these reasons and those stated in the Petition, the Petition for Writ of Certiorari should be granted. For those same reasons, we also suggest that a summary reversal is appropriate.

Respectfully submitted,

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